TITLES OF CASES IN WHICH THIS PETITION IS FILED

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, Debtor, *Petitioner,*

VS.

PRIOR LIEN BONDHOLDERS COMMITTEE, et al., *Respondents.*

(No. 13268 in the Circuit Court of Appeals of the Eighth Circuit)

LOLA BROOKS, Administratrix of the Estate of F. S. Brooks, Deceased, and JOHN E. DIKIS, Administrator of the Estates of Robert E. Lee, Deceased, Leonard E. Lee, Deceased, and Homer C. Lee, Deceasd, *Petitioners,*

VS.

PRIOR LIEN BONDHOLDERS' COMMITTEE, et al., *Respondents.*

(No. 13269 in the Circuit Court of Appeals of the Eighth Circuit)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, et al.,
Petitioners,

vs.

FORT SCOTT BONDHOLDERS' COMMITTEE, et al., *Respondents.*

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

The Debtor, St. Louis-San Francisco Railway Company, on behalf of all interests it is privileged to represent by the terms of Section 77 of the Bankruptcy Act, and Lola Brooks, Administratrix, and John E. Dikis, Administrator, respectively representing the creditors of the Debtor holding judgments for personal injuries for $4,000 and $17,500 respectively (the total amount of unsecured claims has not been adjudicated but the estimated amount is $400,000), pray for writs of certiorari to review an Order of the Circuit Court of Appeals of the Eighth Circuit entered on the 19th day of June, 1946, docketing and dis-

missing petitioners' appeals from the Order of the District Court of the Eastern District of Missouri confirming the plan of reorganization of Debtor's financial structure which was proposed by the Interstate Commerce Commission and certified to said District Court on the 4th day of July, 1944, and October 2, 1944.

Said Order of the Court of Appeals of the Eighth Circuit so entered on the 19th day of June, 1946, dismissed petitioners' appeals and denied motions by the petitioners for an Order governing the printing of the record in said appeals, the consolidation thereof and the fixing of time for filing briefs therein.

JURISDICTION

The jurisdiction of this Court is invoked under Section 240a of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C., §347).

QUESTION PRESENTED

By dismissing the petitioners' appeals from the Order of the District Court confirming the Plan of Reorganization without a *full* hearing, the Court of Appeals denied petitioners and each of them the right of review provided by Section 77, subsection (f) of the Bankruptcy Act (11 U.S.C.A., §205) and thus ignored a clear statutory mandate pertaining to procedure under Section 77 in the Federal courts, all to the great injury of your petitioners, and in so doing so far departed from the usual course of judicial proceedings as to call for the exercise of the power of supervision of the Supreme Court of the United States. Appellants submit that the Order of Dismissal was wrongful and pray that this Court will issue its writs of certiorari and, upon hearing, direct the Court of Appeals to hear the appeals of appellants from the District Court's Order confirming the Plan of Reorganization herein. (Order of Dismissal, page 87. of Record). (Motion to Docket and Dismiss, page 75 of Record.) (Opinion of District Court and Order of Confirmation of Plan, page 57. of Record.)

STATEMENT

The Order complained of in the Court of Appeals was the Final Order of the District Court *confirming* a Plan of Reorganization under Section 77 for the St. Louis-San Francisco Railway Company, debtor. The appellants perfected and lodged, with the Circuit Court of Appeals, appeals from said Order and docketed the same and thereafter appellees moved to docket and dismiss. The motion was argued and sustained but without hearing on the merits of the appeals. This petition is directed to the Order of Dismissal. Only one feature of that Order is here material, to-wit, it provided for the exclusion of all future participation in Debtor's Estate by the appellant debtor and by the appellants judgment creditors here represented by counsel, and other unsecured creditors whose rights are represented by the Debtor.

On May 16, 1933, Debtor filed a petition for corporate reorganization in the District Court of the United States for the Eastern District of Missouri, Eastern Division. The detailed history of the proceedings in that court which culminated in the District Court's Order of November 15, 1945, confirming the Plan and by its terms expropriating the interest of Debtor's stockholders and excluding all creditors other than mortgage creditors, is not relevant to this application. This Court is advised by petitions for writs of certiorari numbered 1108, 1109 and 1110, October Term, 1945, that the Order *approving* the Plan of Reorganization was appealed to the Court of Appeals and affirmed, that a petition for writs of certiorari directed to the affirmance by the Court of Appeals was presented to this Court and denied, and a petition for rehearing has been duly filed in this Court.

The Order of *Approval* was interlocutory. Debtor's property could not be disposed of pursuant to the authority of such Order because it can not be known that such Orders approving a plan under the scheme of Section 77 will be the final Orders of Confirmation. Obviously the proceedings might later be dismissed under the provisions of Sec-

tion 77 (g). Changes in the level of earnings, the accumulation of assets or rejection by those entitled to vote upon the Plan might require the formulation of a new Plan, or possibly a dismissal of the proceedings. Therefore, petitioners were unable to show in any proceeding attacking the Order of Approval that a final Plan would expropriate their interests, and were unable to assuredly raise any question as to the constitutionality and equitable and statutory justification for such expropriation.

Only the Order of Confirmation, by express terms of Section 77, subsection (f), is judicial authority for the vesting of Debtor's assets in others to the exclusion of the Debtor and its non-mortgage creditors. Then and at no time prior can it present its objections predicted upon a decree which may be enforced. At every prior stage a court can truly say or *sub silentio* recognize that such objections are premature.

Your petitioners believe that their respective rights have not been recognized in the Plan confirmed by the District Court and that if their respective contentions are seriously heard and examined by the Court of Appeals upon the appeal from said Order of Confirmation relief ought to be given.

The petitions for writs of certiorari numbered 1108, 1109 and 1110, October Term, 1945, in this Court are supported in this Court by a full record of all proceedings upon which the Approval Order was predicated. The record of all proceedings subsequent to the Approval Order and culminating in the Order of Confirmation accompanies this petition. Should this Court use its power and discretion to consider both petitions and issue writs, the entire record upon the merits of the case will be before the Court. We ask the Court to so consider them.

Since the order dismissing the appeal from the order of confirmation was entered, the Congress passed S-1253 (App. A) the President issued a memorandum concerning it (App. B) and members of the conference committee issued a statement (App. C). These developments were

called to the attention of the Court of Appeals on a petition for rehearing. Major changes in the National Economy in the way of lower levels of interest rates and increased demands for Debtor's R. R. services was called to the Court's attention. The petition for rehearing was denied Sept. 4th, 1946.

REASONS FOR GRANTING WRIT

The reasons for granting writ appear in the Statement.

CONCLUSION

We respectfully submit that the ends of justice will be served by the granting of our prayer for writs of certiorari.

Respectfully,

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Appendix A

HOUSE OF REPRESENTATIVES

79th Congress—*2d Session* Report No. 2691

REORGANIZATION OF RAILROADS

July 27, 1946.—Ordered to be printed

Mr. HOBBS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1253]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1253) to enable debtor railroad corporations expeditiously to effectuate reorganizations of their financial structures; to alter or modify their financial obligations; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment, as follows:

In lieu of the matter inserted by the amendment of the House insert the following: *That (1) it shall be lawful (any express provision contained in any mortgage, indenture, deed of trust, or other instrument to the contrary notwithstanding), with the approval and authorization of the Interstate Commerce Commission (hereinafter referred to as the Commission), as provided in paragraph (2)*

hereof, for a carrier as defined in section 20a (1) of Part I of the Interstate Commerce Act to alter or modify (a) any provision of any class or classes of its bonds, notes, debentures, or other indebtedness, (whether secured, unsecured, matured, or unmatured) issued under any mortgage, indenture, deed of trust, or other instrument, or otherwise created, such bonds, notes, debentures, or other evidences of indebtedness being hereinafter in this section sometimes called "obligations"; (b) any provision of any mortgage, indenture, deed of trust, or other instrument pursuant to which any class of its obligations shall have been issued or by which any class of its obligations is secured: Provided, That the provisions of this section shall not apply to any equipment-trust certificates in respect of which a carrier is obligated, or to any evidences of indebtedness of a carrier the payment of which is secured in any manner solely by equipment, or to any instrument, whether an agreement, lease, conditional-sale agreement, or otherwise, pursuant to which such equipment-trust certificates or such evidences of indebtedness shall have been issued or by which they are secured.

(2) Whenever an alteration or modification is proposed under paragraph (1) hereof, the carrier seeking authority therefor shall, pursuant to such rules and regulations as the Commission shall prescribe, present an application to the commission.. The Commission shall set such application for public hearing and the carrier shall give such notice of such hearing in such manner, by advertisement or otherwise, as the Commission may find practicable and may direct, to holders of such of its classes of securities and to such other persons in interest as the Commission shall determine to be appropriate and shall direct. If the Commission, after hearing, in addition to making (in any case where such alteration or modification involves an issuance of securities) the findings required by

paragraph (2) of said section 20a, shall find that, subject to such terms and conditions (not constituting alterations or modifications of obligations or securities) and with such amendments (altering or modifying the obligations affected by the alteration or modification proposed by the carrier) as the Commission shall determine to be just and reasonable, the proposed alteration or modification—

(a) is within the scope of paragraph (1);

(b) will be in the public interest;

(c) will be in the best interests of the carrier and of the holders of each class of its obligations affected by such modification or alteration; and

(d) will not be adverse to the interests of the holders of any other class of the carrier's securities or to the interests of any creditor of the carrier not affected by such modification or alteration,

then (unless the applicant carrier shall withdraw its application) the Commission shall cause the carrier, in such manner as it shall direct, to submit the proposed alteration or modification (with such terms, conditions, and amendments, if any) to the holders of each class of its obligations affected thereby, for acceptance or rejection. If the Commission shall find that as a result of such submission the proposed alteration or modification has been assented to by the holders—

(i) of at least 66⅔ per centum of the aggregate principal amount outstanding of each class of obligations affected thereby; or

(ii) of less than 66⅔ per centum but not less than 51 per centum of any particular class or classes of securities affected, and the Commission, after hearing, finds that such reduction in percentage will be just and reasonable and in the public interest; or

(iii) in any case where 66⅔ per centum thereof is held by fewer than twenty-five holders, of such larger percentage, if any, as the Commission, after hearing, finds will be just and reasonable and in the public interest;

the Commission shall enter an order approving and authorizing the proposed alteration or modification upon the terms and conditions and with the amendments, if any, so determined to be just and reasonable. Such order shall make provision as to the time when such alteration or modification shall become and be binding, which may be upon publication of a declaration to that effect by the carrier, or otherwise, as the Commission may determine. Any alteration or modification which shall become and be binding pursuant to the approval and authority of the Commission hereunder shall be binding upon each holder of any obligation of the carrier of each class affected by such alteration or modification, and upon any trustee or other party to any instrument under which any such class of obligations shall have been issued or by which it is secured, and when any alteration or modification shall become and be binding the rights of each such holder and of any such trustee or other party shall be correspondingly altered or modified.

(3) For the purposes of this section a class of obligations shall be deemed to be affected by any modification or alteration proposed only (a) if a modification or alteration is proposed as to any provision of such class of obligations, or (b) if any modification or alteration is proposed as to any provision of any instrument pursuant to which such class of obligations shall have been issued or shall be secured: Provided, That in any case where more than one class of obligations shall have been issued and be outstanding or shall be secured pursuant to any instrument, any alteration or modification proposed as to

any provision of such instrument, which does not relate to all of the classes of obligations issued thereunder, shall be deemed to affect only the class or classes of obligations to which such alteration or modification is related. For the purpose of the finding of the Commission referred to in paragraph (2) of this section as to whether the required percentage of the aggregate principal amount outstanding of each class of obligations affected by any proposed alteration or modification has assented to the making of such alteration or modification, any obligation which secures any evidence or evidences of indebtedness of the carrier or of any company controlling or controlled by the carrier shall be deemed to be outstanding unless the Commission in its discretion determines that the proposed alteration or modification does not materially affect the interests of the holder or holders of the evidence or evidences of indebtedness secured by such obligation. Whenever any such pledged obligation is, for said purposes, to be deemed outstanding, assent in respect of such obligations, as to any proposed alteration or modification, may be given only (any express or implied provision in any mortgage, indenture, deed of trust, note, or other instrument to the contrary notwithstanding) as follows: (a) where such obligation is pledged as security under a mortgage, indenture, deed of trust, or other instrument, pursuant to which any evidences of indebtedness are issued and outstanding, by the holders of a majority in principal amount of such evidences of indebtedness, or (b) where such obligation secures an evidence or evidences of indebtedness not issued pursuant to such a mortgage, indenture, deed of trust, or other instrument, by the holder or holders of such evidence or evidences of indebtedness; and in any such case the Commission, in addition to the submission referred to in paragraph (2) of this section, shall cause the carrier in such manner as it shall direct to submit the proposed alteration or modifi-

cation (with such terms, conditions, and amendments, if any, as the Commission shall have determined to be just and reasonable) for acceptance or rejection, to the holders of the evidences of indebtedness issued and outstanding pursuant to such mortgage, indenture, deed of trust, or other instrument, or to the holder or holders of such evidence or evidences of indebtedness not so issued, and such proposed alteration or modification need not be submitted to the trustee of any such mortgage, indenture, deed of trust, or other instrument, but assent in respect of any such obligation shall be determined as hereinbefore in this section provided. For the purpose of any such assent the evidences of indebtedness issued and outstanding under any such mortgage, indenture, deed of trust, or other instrument shall be determined by the Commission.

(4) (a) Any authorization and approval hereunder of any alteration or modification of a provision of any class of obligations of a carrier or of a provision of any instrument pursuant to which a class of obligations has been issued, or by which it is secured, shall be deemed to constitute authorization and approval of a corresponding alteration or modification of the obligation of any other carrier which has assumed liability in respect of such class of obligations as guarantor, endorser, surety, or otherwise: Provided, That such other carrier consents in writing to such alteration or modification of such class of obligations in respect of which it has assumed liability or of the instrument pursuant to which such class of obligations has been issued or by which it is secured, and, such consent having been given, any such corresponding alteration or modification shall become effective, without other action, when the alteration or modification of such class of obligations or of such instrument shall become and be binding.

(b) Any person who is liable or obligated contingently or otherwise on any class or classes of obligations issued by a carrier shall, with respect to such class or classes of obligations, for the purposes of this section, be deemed a carrier.

(5) The authority conferred by this section shall be exclusive and plenary and any carrier, in respect of any alteration or modification authorized and approved by the Commission hereunder, shall have full power to make any such alteration or modification and to take any actions incidental or appropriate thereto, and may make any such alteration or modification and take any such actions, and any such alteration or modification may be made without securing the approval of the Commission under any other section of the Interstate Commerce Act or other paragraph of this section, and without securing approval of any State authority, and any carrier and its officers and employees and any other persons, participating in the making of an alteration or modification approved and authorized under the provisions of this section or the taking of any such actions, shall be, and they hereby are, relieved from the operation of all restraints, limitations, and prohibitions of law, Federal, State, or municipal, insofar as may be necessary to enable them to make and carry into effect the alteration or modification so approved and authorized, in accordance with the conditions and with the amendments, if any, imposed by the Commission. Any power granted by this section to any carrier shall be deemed to be in addition to and in modification of its powers under its corporate charter or under the laws of any State. The provisions of this section shall not affect in any way the negotiability of any obligation of any carrier or of the obligation of any carrier which has assumed liability in respect thereto.

(6) The Commission shall require periodical or special reports from each carrier which shall hereafter secure from the Commission approval and authorization of any alteration or modification under this section, which shall show, in such detail as the Commission may require, the action taken by the carrier in the making of such alteration or modification.

(7) The provisions of this section are permissive and not mandatory and shall not require any carrier to obtain authorization and approval of the Commission hereunder for the making of any alteration or modification of any provision of any of its obligations or of any class thereof or of any provision of any mortgage, indenture, deed of trust, or other instrument, which it may be able lawfully to make in any other manner, whether by reason of provisions for the making of such alteration or modification in any such mortgage, indenture, deed of trust, or other instrument, or otherwise: Provided, That the provisions of paragraph (2) of said section 20a, if applicable to such alteration or modification made otherwise than pursuant to the provisions of this section, shall continue to be so applicable.

(8) The provisions of paragraph (6) of said section 20a, except the provisions thereof in respect of hearings, shall apply to applications made under this section. In connection with any order entered by the Commission pursuant to paragraph (2) hereof, the Commission may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify the provisions of any such order, subject always to the requirements of said paragraph (2).

(9) The provisions of subdivision (a) of section 14 of the Securities Exchange Act of 1934 shall not apply to any

solicitation in connection with a proposed alteration or modification pursuant to this section.

(10) The Commission shall have the power to make such rules and regulations appropriate to its administration of the provisions of this section as it shall deem necessary or desirable.

Sec. (2). (1) All proceedings under section 77 of the Bankruptcy Act, whether before the Interstate Commerce Commission or United States courts, relating to the preparation or effectuation of plans of reorganization of each carrier by railroad as defined in said section 20a (1) whose properties on the effective date of this Act or at any time thereafter are in the custody of the United States courts, shall be forthwith suspended and discontinued as of the effective date of this Act—

(A) If the gross railway operating revenues of such carrier for any of the calendar years 1942 to 1944, inclusive, were in excess of $50,000,000; or if its gross railway operating revenues were not in excess of such amount, such carrier is a debtor in any such proceeding, or is a party defendant in any proceeding ancillary thereto, with another such carrier whose revenues were so in excess; and

(B) If, for the period of seven calendar years from 1939 to 1945, inclusive, the total of the income reported to the Commission as income available for fixed charges, plus (a) the total of any amounts so reported as a deficit for fixed charges in any of said seven years to the extent of the total of any amounts reported for Federal income and excess-profits taxes in any of said years, and (b) amounts deducted in any year for amortization of emergency facilities under section 124 of the Internal Revenue Code in excess of 20 per centum of the cost of such facilities, of such carrier, or, on a joint or consolidated basis, of the carriers in the system of which such carrier is a part, or of such

carrier and other carriers, directly or indirectly controlled by it, through direct or indirect ownership of at least a majority of their stock, is at least equal to the reported total fixed charges (other than charges on intercompany obligations) of such carrier or carriers for such period.

(2) Carriers to which paragraph (1) of this section is applicable shall institute proceedings and file application under section 1 of this Act as expeditiously as practicable but in no event later than eighteen months after the effective date of this Act, or such longer period as the Commission, on application, may approve.

(3) The properties of any carrier specified in paragraph (1) of this section shall continue in the custody of the United States courts having custody of them; except that, the following portions of said section 77 shall not be applicable in any such case:

(a) The first two paragraphs of subsection (b).

(b) Subdivision (1) of subsection (c).

(c) The first five sentences, and the first seven words and the last twenty-two words of the sixth sentence, of subdivision (2) of subsection (c): Provided, That for the purposes of this section there shall be substituted for the said last twenty-two words of said sixth sentence, the words "custody and supervision of the judge".

(d) Subsections (d), (e), (f), and (k).

In addition to the foregoing exceptions and for the same purpose of applying to such carriers in the cases in which and during the period for which such custody is held under said section 77, and pending the consummation of proceedings under section 1 of this Act, the word "debtor" shall be subtituted for the words "trustee or trustees" wherever such latter words occur in subdivisions (3), (5),

(9), and (10) of subsection (c), and subsections (i) and (o), of said section 77. The provisions of subsection (12) of subsection (c) of said section 77 shall be applicable to proceedings under this Act. The final determination heretofore or hereafter made in the United States courts with respect to the relative priorities as between the respective classes of security holders, the subordination of the interest of a creditor or security holder of the debtor to the inteest of other creditors or security holders, or the validity, amount and priority of any claim shall continue in full force and effect. Nothing contained in this Act is intended or shall be construed to modify or rescind any such determination or to prevent or delay the prosecution to final determination of any such issue now pending, and not yet finally determined, in the United States courts. Nothing in this Act shall be deemed to limit, qualify or restrict the right of the debtor (which right of the debtor is hereby confirmed), with the approval of the court (a) to purchase in whole or in part any bond issues or other obligations of the debtor (including bonds or other obligations guaranteed or assumed by the debtor), at a discount or otherwise, provided that the court's approval of the debtor's purchase of any such obligations junior in lien to first lien mortgage bonds shall be granted only if the court finds, after hearing, that such purchase will be for the best interests of the estate of the carrier and will not deprive the holders of obligations senior in lien to the obligations proposed to be purchased, of adequate security and protection; (b) to hold or to retire and cancel any of its bonds or other obligations now held or hereafter acquired by the debtor; and (c) to make voluntary agreements or compromises with any creditor or creditors as to either principal or interest of his or their claims or the security therefor, provided that the court shall find, after hearing, that any such agreement or compromise will be in the best interests of the estate of the carrier and will

not unjustly or inequitably affect the claims or security of other creditors.

(4) The proceedings with respect to any such carrier specified in paragraph (1) of this section under section 77 of the Bankruptcy Act shall be dismissed upon consummation of proceedings affecting such carrier under section 1 of this Act, or upon payment of its matured, unpaid obligations, or the making of other arrangements with reference to such obligations satisfactory to the owners of the claims therefor; and such proceedings may be dismissed under the conditions and in the manner prescribed in subsection (g) of section 77 of the Bankruptcy Act: Provided, That in the event there has been a determination by the United States courts with respect to subordination of any claim, or the issue thereon has not been finally determined, the determination of that one issue, and only that issue, shall be continued and prosecuted to completion and shall be binding on the security holders of such company; but such continuance of the determination of that sole issue shall not delay the dismissal of the proceedings in any and every other respect.

(5) The appointment, term of office, powers, authority, compensation and fees of each trustee appointed by the court, and of each counsel of such trustee, shall be terminated on or before sixty days after the effective date of this Act: Provided, That if the board of directors of the carrier shall have been elected, pursuant to the provisions of paragraph (11) of this section, prior to the expiration of the afore-mentioned sixty-day period, the appointment, term of office, powers, authority, compensation and fees of such trustees and counsel shall be terminated forthwith.

(6) The provisions of this section shall not apply if at the time of filing the petition for reorganization under

section 77 of the Bankruptcy Act as amended, more than 95 percent of the outstanding voting stock of the debtor railroad corporation shall have been owned or controlled, directly or indirectly, by voting trust or otherwise, by another railroad corporation not a debtor in the same proceeding under the said section 77 with the said debtor and/or by a corporation owning or controlling more than 95 percent of the outstanding voting stock of another railroad corporation; provided also, that this section shall not apply to a railroad corporation if (1) all of its stock is owned directly or indirectly by an operating railroad corporation, (2) both corporations are in the same proceeding under the said section 77, and (3) pursuant to the provisions in this paragraph, this section does not apply to the said operating railroad corporation which owns all of the stock of the said controlled railroad corporation. The term "corporation" as used in this paragraph shall be deemed to include its trustees appointed under the aforesaid section 77 of the Bankruptcy Act.

(7) If the United States of America, or any agency thereof, or any corporation (other than the Reconstruction Finance Corporation) the majority of the stock of which is owned by the United States of America, is a creditor or stockholder of any such carrier, the President of the United States or any officer or agency he may designate, is hereby authorized to act in respect of the interest or claims of the United States or of such agency or other corporation.

(8) The Commission shall designate one or more qualified members of its staff to serve as mediator or mediators in each of the proceedings under section 1 with respect to carriers specified under paragraph (1) of this section for the purpose of bringing the different classes of creditors and other security holders together, of being available to advise with them, of assisting in the effectua-

tion of changes, compromises, arrangements, negotiations, and dealings with the various classes of creditors and other security holders and with individuals, groups, and committees representing creditors or other security holders, of assisting in expediting all stages of the proceedings and the early termination and the consummation of all transactions hereunder, including all steps requisite for the effectuation thereof.

(9) In proceedings under section 1 with respect to a carrier specified in paragraph (1) of this section the Commission shall have the power, in its discretion, to submit to holders of obligations, any proposed alteration or modification affecting them which the Commission has caused the carrier to submit to such holders under the provisions of the fourth sentence of paragraph (2) of section 1 hereof; in the event that it is satisfied that such alteration or modification has been accepted by or on behalf of creditors of each class to which submission is required under section 1 holding more than two-thirds in amount of the total of the allowed claims of such class which have voted on said alteration or modification, the Commission shall enter an order approving and authorizing the proposed alteration or modification as provided in said paragraph (2) of section 1 hereof: Provided, That it shall enter such order in any case in which such alteration or modification has not been so accepted by the creditors of any class or classes if it finds, after hearing, that the alteration or modification makes adequate provision for fair and equitable treatment for the claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those rejecting them and all the relevant facts; and that the alteration or modification is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, and will conform to the requirements of the law of the land.

(10) If after having submitted a proposed alteration or modification to holders of affected obligations as provided in paragraph (9), the Commission shall not have entered an order approving and authorizing such proposed alteration or modification within a period of twelve months following the date of the filing of an application in accordance with paragraph (2) of this section, or such extended periods as the Commission on application therefor may approve, then the Commission, after hearings, shall formulate and submit to holders of affected obligations such alteration or modification as in its opinion meets the standards set forth in section 1 above; in applying such standards of section 1 for the purpose of any such alteration or modification under this paragraph, the Commission shall give full effect to all changes, facts, and developments since 1940, including, without limitation, for such period total railway operating revenues, operating expenses and other charges, net earnings, the full effect of amortization deductions on earnings of past and future years, improvements to the property, the effect of the released collateral through past or future payment of loans, cash and net current assets, retirements and purchases of debt, including retirements and purchases at a discount that have been made or that can reasonably be made, adjustment and reduction of interest rates on outstanding debt that may be made including the adjustment and reduction of interest rates for prior years. In the event the Commission is satisfied that such alteration or modification has been accepted by the percentages required for acceptance under the provisions of section 1 or of paragraph (9) of this section it shall enter an order approving and authorizing such alteration or modification, unless it finds that, prior to the entry of such order, the alteration or modification submitted under paragraph (9) has been accepted by the percentages required by the provisions of that paragraph or of section 1, in which event

it shall enter an order approving and authorizing such alteration or modification submitted under paragraph (9).

(11) (a) Every carrier to which paragraph (1) of this section is applicable shall call a meeting of stockholders for the election of directors to be held within sixty days after the effective date of this Act. The present terms of office of all directors and officers of such carrier shall terminate upon the election and qualification of their successors, as herein provided, notwithstanding any provision of the charter or by-laws of such carrier or of any State law to the contrary. The terms of office of all directors elected at such meeting shall be the unexpired terms of present directors.

(b) No holding company, individual, group, partnership, association, corporation, or other entity (excluding any operating common carrier subject to Part I of the Interstate Commerce Act, but not excluding any holding company or other nonoperating corporation which has been held or which may be held to be a common carrier within the meaning of said Act)——

> (A) *which exercises direct or indirect control of one or more railroad corporations the properties of which are not in the custody of a court in proceedings under section 77 of the Bankruptcy Act; and*
>
> (B) *which also owns shares of voting stock of any railroad corporation to which this Act is applicable, in sufficient number to enable the owner thereof to control such carrier,*

shall during the period the debtor shall be in possession of its properties and in control of the management and operation thereof under this Act, vote such shares for the election of more than a minority of the directors of any railroad corporation to which this Act is applicable.

(c) No stock of any common carrier to which paragraph (1) of this section is applicable, which stock is owned or controlled directly or indirectly by, or held for the benefit of, or pledged as security by, any other common carrier to which paragraph (1) of this section is applicable, shall be voted for the election of directors during the proceedings under this Act, unless at the time of filing the petition for reorganization under section 77 of the Bankruptcy Act as amended, the transaction or transactions by which such stock was acquired, and the ownership and control of such stock, had been approved by the Interstate Commerce Commission pursuant to the applicable provisions of section 5 of the Interstate Commerce Act, as amended or unless the two carriers are debtors in the same proceeding under section 77 of the Bankruptcy Act, as amended.

(d) In the determination of whether a quorum is represented in attendance at any meeting of stockholders of any carrier to which paragraph (1) of this section is applicable, held during the pendency of proceedings under this Act, for the election of directors or for other purposes, all voting stock standing in the name of, or held for the benefit of or pledged or assigned by, or directly or indirectly controlled by, any carrier, holding company, individual, corporation or other entity to which subparagraph (b) or (c) of this paragraph (11) is applicable, which voting stock may be not represented at said meeting shall nevertheless be considered and counted as being represented in attendance at such meeting, notwithstanding any provision of the charter or by-laws of such carrier or the provision of any State law to the contrary.

(12) Any party having properly filed an application under section 5 of the Interstate Commerce Act to control, or participate in the control of, a carrier to which section 2 of this Act applies, is hereby authorized to inter-

vene generally in and become a party to the proceedings under this Act affecting such carrier.

(13) No readjustment of financial structure or other proceeding under this Act and no order of the court or Commission in connection therewith shall relieve any carrier from the obligation of any final judgment of any Federal or State court rendered prior to January 1, 1939, against such carrier or against one of its predecessors in title requiring the maintenance of offices, shops, and roundhouses at any place, where such judgment was rendered on account of the making of a valid contract or contracts by such carrier or one of its predecessors in title.

(14) In judicial review of any order of the Commission approving or authorizing a proposed alteration or modification entered pursuant to the authority of paragraph (10) of this section 2, the court (and any court on review thereof) shall not be concluded by any determination or finding made by the Commission as to matters either of law or of facts, and the court shall make full and independent reexamination and review of the issues and of the evidence and thereafter shall arrive at a decision in the exercise of its independent judgment based upon such judicial reexamination and review. Any order of the Circuit Court of Appeals relating to any alteration or modification under paragraph (10) of this section 2 shall be reviewed by the Supreme Court of the United States upon appeal made by any person affected by the plan who deems himself aggrieved within sixty days after the entry of such order or decree, pursuant to the applicable provisions of the Judicial Code.

(15) In the case of any carrier which is under the jurisdiction of the United States Courts on the effective date of this Act, and to which the provisions of paragraph (1) of section 2 of this Act would be applicable if such

carrier were in the custody of such courts on such date, and with respect to which carrier, securities under a plan of reorganization approved by the court and Commission had already been issued, a holder of a security of any class which rejected, or was not entitled to vote on, such plan in accordance with subsection (e) of said section 77, may, within ninety days after the date of enactment of this Act, apply to the Commission for amendment of the plan to the extent necessary to permit the issuance, to holders of securities of such class, of options or warrants as described in subsection (b) of said section 77. If the Commission shall find after hearings that the proceeds of the exercise of such options or warrants will be applied in conformance with the requirements of section 20 (a) of the Interstate Commerce Act (including, without limitation the application of such proceeds to the retirement of outstanding obligations of the carrier), it shall approve such application and shall order the carrier to issue such options or warrants.

Sec. 3. The provisions of sections 1801, 1802, 3481, and 3482 of the Internal Revenue Code and any amendments thereto, unless specifically providing to the contrary shall not apply to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to section 1 or section 2 of this Act. No income, gain, or profit taxable under any law of the United States or of any State, now in force, or hereafter enacted shall be deemed to have accrued to or have been realized by such carrier by reason of such an alteration or modification, or by reason of any transaction authorized in the last sentence of paragraph (3) of section 2.

Sec. 4. If any provision of this Act, or the application thereof to any person or circumstances, is held in-

valid, the remainder of this Act and the application of such provision to other persons or circumstances, shall not be affected thereby.

And the House agree to the same.

Amend the title so as to read: "An Act to enable debtor railroad corporations, whose properties during a period of seven years have provided sufficient earnings to pay fixed charges, to effect a readjustment of their financial structures; to alter or modify their financial obligations; and for other purposes."

HATTON W. SUMNERS,
SAM HOBBS,
MARTIN GORSKI,
CHAUNCEY W. REED,
JOHN W. GWYNNE,
Managers on the Part of the House.

B. K. WHEELER,
ED C. JOHNSON,
CLYDE REED,
Managers on the Part of the Senate.

Appendix B

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of S. 1253, entitled "An Act to enable debtor railroad corporation, whose properties during a period of seven years have provided sufficient earnings to pay fixed charges, to effect a readjustment of their financial structures; to alter or modify their financial obligations; and for other purposes."

Even though I am familiar with the deficiencies and inequities and the evils that exist under section 77 of the present Bankruptcy Act, I fear that this new bill would not accomplish the purpose for which it was intended.

The bill contains two sections, the first of which contemplates the prevention of bankruptcy proceedings where practicable; the second contemplates the reorganization of certain railroad carriers by the institution of proceedings under section 1 of the bill for readjustment of their financial affairs.

Objections which I have to the bill include the following:

The bill fails to direct specifically the immediate reduction of the grossly excessive interest rates now wasting the funds of the railroads in section 77 proceedings. Millions of dollars per year can be saved at once for each of the railroads in section 77 proceedings, by reducing the interest rates on their bonds and other debt down to the level of the interest rates paid by railroads not in section 77 proceedings. I reiterate a statement which I made in my message to Congress on the state of the Union which is as follows, "low interest rates will be an important force in promoting the full production and full employment in the post-war period for which we are all striving."

The bill does not adequately cure the evil, present in reorganizations under section 77, of permitting improper control of railroads after their reorganization.

The bill fails to provide full protection against forfeiture of securities and investments.

The level of fees and expenses in reorganization cases under section 77 has been excessive. This is not corrected in this bill. Affirmative provisions to curb this evil and to bring it under strict control should be included in any bill which may be enacted.

The bill excludes from its benefits certain railroads which should be brought within its provisions if it is to become law. In this regard it appears that the fifty million dollar limitation in section 2 of the bill would exclude some railroads for whose exclusion there appears to be no logical justification.

This bill fails to correct a serious abuse which I condemned in the course of the Senate railroad investigation. I refer to the abuse of diverting, under cover of a reorganization plan, the funds of a railroad for the purchase of its own stocks in the market.

On the other hand, the bill does incorporate principles for which I was one of the sponsors in the Senate. I commend particularly the emphasis which the bill places on the principle that reorganizations must give primary consideration to the public interest, and to the best interests of the railroads which are being reorganized.

This requires among other things that reorganizations shall place control of railroads in persons primarily concerned with transportation for the communities served and for the nation as a whole, without any strings direct or indirect, conditional or otherwise, to institutions or others in distant financial centers.

Such regard for the public interest will also help the stockholders, whether they be railroad employees who have invested in the stocks of the companies for which they work, or ordinary investors, desirous of safeguarding their investment, but not of helping any interest to capture control of their railroad. These stockholders, whom the bill justly seeks to protect against forfeiture, can and should get such protection, but without enabling any financial interest to use such legislation to acquire control.

By withholding my signature to this bill I do not intend to indicate that I favor the pending reorganization plans. I am in agreement with those objectives of the bill which prevent undesirable control of the railroads, either immediately or within a few years, and which prevent forfeitures of securities.

I believe that the next Congress can pass a bill which will meet the stated objections and which will be in the best interests of the public, the railroads, the bondholders and other creditors, and the stockholders.

HARRY S. TRUMAN

The White House,
August 13, 1946

Appendix C

The Railroad Reorganization Bill, S. 1253, was the culmination of over three years of intensive effort to save two billion dollars of investments made by hundreds of thousands of stockholders and junior bondholders in railroads now in process of reorganization under Section 77 of the Bankruptcy Act. Those investments will be wiped out under pending plans of reorganization unless legislation is enacted to prevent it. This bill was designed and passed by the Congress primarily for that purpose.

Those who have supported this legislation will be definitely heartened by the declaration of principles contained in the President's memorandum stating why he withheld his signature from the bill. For it is clear that the broad principles announced by the President are shared by the proponents and supporters of this legislation. Broadening of the bill to meet the requirements of the President's objections can and will be drafted. Such a bill will be promptly introduced at the next session of the Congress. As Congress has already overwhelmingly committed itself to such legislation and the President has declared that he, too, favors its purposes, the prompt enactment of such a measure appears certain.

While this legislation was under consideration in the Committees of the Senate and House, a number of courts and the Interstate Commerce Commission recognized the appropriateness of cooperating with Congress in meeting this public problem and abstained from taking steps which would have carried forward any of the pending reorganization plans under Section 77. This was months before the legislation came up for a vote in either the Senate or House. Now that the legislation, both in the form in which it was reported by the respective Committees of the Senate and House and in the subsequent form contained in the Conference Report, was passed by

an overwhelming vote in each chamber and the objectives of the legislation have received the approbation of the President, it is confidently hoped that the courts and the Commission will take no steps in support of furtherance of pending reorganization plans under Section 77, but will instead await action by the Congress and the President on legislation giving effect to the principles favored by both.

CLYDE M. REED
JAMES M. TUNNELL
SAM HOBBS
CHAUNCEY W. REED

Washington D. C.
August 14, 1946.